

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5281 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ARUNKUMAR D SHAH & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR PV HATHI for Petitioners
MR SAMIR DAVE for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/01/97

ORAL JUDGEMENT

1. The petitioners, twelve in number, filed this writ petition before this court and have challenged thereunder the order dated 2nd January, 1982 passed by Deputy Collector, Nadiad, the order dated 2nd January, 1984 passed by the Collector, Kheda and the order dated 10th June, 1986 passed by the Deputy Secretary (Appeals).

2. The facts of the case, in brief, are that the

petitioners are the members of Sadhna Cooperative Housing Society Ltd., Petlad Road, Nadiad. The society has been formed in the year 1967. The houses came to be constructed in the year 1975, but the basic amenities like electricity, gutter, water connection and road were not available. However, the petitioners admittedly occupied the houses in the year 1976-77. In the year 1976-77, Civil Hospital, Nadiad came to be constructed near the Society, and therefore the Society got necessary facilities of the road and light. The petitioners who occupied the houses were all the time facing constant threat of pilferage and theft, and as such, were compelled to construct boundary walls in and around their residential blocks with a view to save themselves from the constant harassment and to secure protection from the nuisance of the kind referred to above. At present all the members have constructed boundary walls around their respective residential blocks and constructions like staircase, verandah, etc. within the lands of the Society but not in accordance with the layout plan approved, when the N.A. permission was granted. The Society was served with a notice by the Deputy Collector, Nadiad, for committing breach of the N.A. permission by making construction in excess of the lay out plan. Under the order dated 20th December, 1975 of the Deputy Collector, Nadiad, the said constructions were ordered to be regularised on payment of Rs.9200/- as composition fee and other charges as mentioned in the said order. However, some of the plot holders filed an appeal before the Collector against the said order of the Deputy Collector, Nadiad, and the said appeal was allowed by the Collector under its order dated 30th April, 1976 and the matter was remanded on the issues raised by the said appellants. On remand, the Deputy Collector, under its order dated 2nd January, 1982 ordered 10 plot holders, who had made construction in the margin area to pay composition fee and fine while 7 plot holders who had made boundary walls in the internal Society road were ordered to remove the same within a period of one month from the date of the order.

3. Being aggrieved of the aforesaid order, the petitioners preferred an appeal to the Collector. The Collector dismissed the appeal and confirmed the order of the lower authority. The petitioners then approach to the Secretary (Appeals), Revenue Department, by preferring a revision application under the provisions of sec.211 of the Bombay Land Revenue Code. The said revision application No.6/86 was heard by the then Secretary (Appeals), Revenue Department, Shri K.C. Sagar, and after appreciating the contentions, he called

for some important information and documents from the Municipality and the matter was adjourned to another date for hearing. Then the said revision application came up for hearing before the Deputy Secretary (Appeals), Revenue Department, who rejected the same on the ground of limitation. Hence, this Special Civil Application.

4. In para no.7(4), the petitioners made the averments that earlier, the then Secretary, Shri K.C. Sagar, had in fact entertained the revision application and had directed the parties to produce the revised plans before 27th February, 1986 and the matter was fixed for hearing on 29th April, 1986. The petitioner had in the meantime obtained approval of the revised plan by the Municipality and had produced the same, but the Deputy Secretary, instead of considering the matter on merits took a technical view in the matter by stating that the same was not produced within time specified by his office i.e. it was not produced before 27th February, 1986. The revision application has been dismissed only on the ground of limitation. The petitioners have further made a statement that the Collector while hearing the appeal had granted time to the petitioners to submit revised plans, which could not have been done, within time specified, by the petitioners even though the petitioners in the meantime, before and after the order of the Collector, had moved the Municipality for approving such revised plans, which in fact was approved on 3rd April, 1986. These averments made by the petitioners have not been disputed by the respondent. The respondent has not filed any reply to the Special Civil Application.

5. Reference may be made to other averments made by the petitioners in para No.8 of this Special Civil Application. The petitioners have come up with a case that they have made construction of the boundary walls in the internal road of the Society in the year 1975 and 1976. The construction made by other members of the Society is already regularised by the Deputy Collector. The petitioners have also now obtained the revised plan making the internal society road 20 ft. wide instead of 30 ft. wide, as was formerly planned and the same has been approved by the Municipality. These facts have also not been controverted by the respondents. So there was a technical breach of the sanctioned plan of construction i.e. the petitioners constructed the boundary walls on the internal road of the society. In the original plan sanctioned, the width of the road was of 30 ft. and by this construction of the boundary walls it has been reduced to 20 ft. or may be less. The Collector, while hearing the appeal as well as the Secretary while hearing

the revision application have asked the petitioners to get the plan revised. It is different matter that the time granted by the Collector as well as by the Secretary for getting the revised plan approved by the Municipality fall short to get the plan revised by the petitioners.

6. I find sufficient merits in the contention of the counsel for the petitioners that they have no control over the affairs of the Municipality as well as they are not in a position to compel the Municipality to pass the order within stipulated period, as directed by the Collector. It is for the Municipality to decide the matter and pass appropriate order and which in fact has been done in the present case on 3rd April, 1986. So whatever technical breach, has been made of the sanctioned plan by the petitioners has come to be rectified by the approval of the revised plan. In the revised plan, the internal road width has been now settled at 20 ft. and it is not the case of the respondent that the petitioners raised the construction narrowing the road from 20 ft., sanctioned road. The whole approach of the respondent, revisional authority, in the matter was perverse. The substance of the matter has to be considered and not the form. The delay may be there in filing of the revised plan, but the authority has failed to consider one important aspect that under sec.211 of the Bombay Land Revenue Code, the limitation has not been prescribed. The matter should have been looked into to advance justice to the parties and not to deny justice on technicalities.

7. In view of the fact that the plan has been revised and the width of internal road of the society has now been revised from 30 ft. to 20 ft., and there is no dispute on record that the construction of the boundary walls has been made by the petitioners not exceeding an inch on the 20 ft. wide road of the internal Society, this writ petition deserves to be accepted.

8. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 2nd January, 1982, passed by the Deputy Collector, Nadiad, and the order dated 2nd January, 1984, passed by the Collector, Kheda, and the order dated 10th June, 1986, passed by the Deputy Secretary (Appeals) are quashed and set aside. Rule is made absolute with no order as to costs.

zgs/-

